

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET AL

v.

MICHAEL HITRINOV ET AL

Consolidated With

DOCKET NO. 1953(I)

KAIRAT NURGAZINOV, ET AL

v.

MICHAEL HITRINOV ET AL

RESPONDENTS' STATUS REPORT

Respondents EUL and Mr. Hitrinov hereby submit this status report regarding the required joint schedule for completion of discovery.

The Initial Order in this case, as modified by the Presiding Officer's Order of May 24 (regarding joint status report), requires the Parties to submit by June 13, 2016 a joint status report addressing the schedule for discovery. As evidenced by the most recent exchange on this issue between the undersigned and Counsel for Complainants (attached), Counsel for Complainants has flatly declined to participate. Accordingly, in order to avoid any surprise, we inform the Presiding Officer that Respondents will submit their own proposed schedule on Monday.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Eric Jeffrey", written in dark ink. The signature is positioned above a horizontal line.

Eric Jeffrey
Anjali Vohra

Nixon Peabody LLP

799 9th Street, N.W., Suite 500

Washington, D.C. 20001

202-585-8000

Jeffrey, Eric

From: Jeffrey, Eric
Sent: Tuesday, June 07, 2016 12:22 PM
To: 'Marcus Nussbaum'
Cc: Vohra, Anjali
Subject: RE: FMC Docket Nos.: 15-11 and 1953(I)

Dear Mr. Nussbaum

I am very surprised to see your motion, as it was made without prior conferral, as required by the FMC Rules. In any event, I have some developments to report.

1. As previously communicated, I asked Empire to re-review their files for any possible shipping documents.
2. Empire has in fact done so, and determined that there are no more such documents in its possession or control.
3. Some of the documents you reference may be held by outside parties with which Empire has business relations. Empire has, on a voluntary basis, requested such companies to provide those documents if they indeed have them. These documents are not required by the Order, but if provided by the third parties will be provided in the spirit of advancing the proceeding.
4. Empire may also provide copies of one or more documents that are not shipping documents as used in the Order, but that might assist in moving things forward.

As to depositions, I note that the only proposed deposition is about six weeks away, so any claim of non-cooperation is specious. Indeed, you have not asked for any cooperation.

As previously stated, I believe that depositions, and other discovery, should be done on an orderly basis in accordance with a schedule proposed by the parties (preferably together) and adopted by the Presiding Officer, as provided in the Initial Order and the Presiding Officer's Order of May 24. In that regard, I consider your notice to be premature. But as it is scheduled for July, that can be addressed in connection with the scheduling proposal(s).

I note for academic purposes that your notice is otherwise objectionable.

1. A party may not name the person to be deposed in a deposition of a company. You may request only that a person or persons be provided who can represent the company regarding the listed topics. It is up to the company to decide on its representative(s), so long as it meets its obligation to provide an appropriate person or persons.

2. A notice of deposition of a party may not properly include a requirement to produce documents. That must be done by a separate request for documents, returnable at or before the deposition.

3. Your topic 4 is of course inconsistent with the attorney-client privilege.

If I may be what you may consider presumptuous, I would suggest that you withdraw or suspend your motion pending further developments.

Best regards,

Eric



Eric C Jeffrey

Counsel

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From: Marcus Nussbaum [<mailto:marcus.nussbaum@gmail.com>]

Sent: Tuesday, June 07, 2016 10:18 AM

To: secretary@fmc.gov

Cc: Judges; Jeffrey, Eric; Kidambi, Harini

Subject: FMC Docket Nos.: 15-11 and 1953(I)

Dear Secretary of the Federal Maritime Commission,

I represent the Complainants in the above referenced matter.

Attached please find the COMPLAINANTS' MOTION TO STRIKE, TO PRECLUDE, AND TO COMPEL COMPLIANCE WITH THE PRESIDING OFFICER'S ORDERS.

Counsel for the respondents has been served herewith and via first class mail.

The original and five copies are being mailed to your office under separate cover.

Regards,

Marcus A. Nussbaum, Esq.

P.O. Box 245599

Brooklyn, NY 11224

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Jeffrey, Eric

From: Marcus Nussbaum <marcus.nussbaum@gmail.com>
Sent: Tuesday, June 07, 2016 9:07 PM
To: Jeffrey, Eric
Cc: Vohra, Anjali
Subject: FMC Docket Nos.: 15-11 and 1953(I)

Dear Mr. Jeffrey,

I am in receipt of your omnibus email of this date and respond to those limited portions which merit or require a reply.

Your professed surprise at the interposing of Complainants' pending motion is, to say the least, grossly disingenuous in that you were advised in writing that Complainants would be filing said motion subsequent to numerous good faith attempts having been made (albeit, unsuccessfully) to resolve outstanding discovery, despite your inexplicable disavowing of such efforts which were well documented in Complainants motion.

Least you have conveniently forgotten, your response to Complainants 'good faith' attempts to resolve outstanding discovery consisted of the following: (1) dismissively stating that Respondents were not in possession of any documents responsive to the Presiding Officer's Orders or Complainants' demands; (2) wholly abdicating your duties and responsibilities as counsel to the Respondents herein by deferring decisions as to what materials should be produced *to your client*; and (3) vague and nebulous representations that Complainants' demands would be considered "in due course".

As should be elemental to one of your professed experience, and needless to say, your own personal representations as to alleged efforts made by your client to comply with the Presiding Officer's Orders are grossly insufficient and of no merit *whatsoever*. As you should also be well aware, and to the extent that your client professes not to be in possession of documents responsive to the Presiding Officer's Orders or Complainants' demands, it is fully incumbent upon your client to duly execute a Certification attesting to, *inter alia*, any and all searches conducted, where, when, and by whom, as well as particulars concerning whether or not materials responsive to Complainants' demands were destroyed, discarded, or otherwise spoiled, including the deleting or reformatting of electronically stored information after a time that it was reasonable that there would be litigation hereon. Such particulars need further include the last known whereabouts of any such material responsive to the Presiding Officer's Orders or Complainants' demands. It is, of course, *a fortiori* that Respondents shall and will be precluded from offering into evidence at trial of this matter *any* materials previously claimed to either be nonexistent, or not within Respondents' custody and control, which may miraculously surface at trial subsequent to the execution of Certifications thereon attesting to their nonexistence, or as to Respondents not being in possession of same.

As to your turgid representations regarding documents "held by outside parties with which Empire has business relations", you are advised that production of such documents *shall not* be deemed a substitute for documents that Respondents were otherwise required to provide pursuant to the Presiding Officer's Orders, or in the alternative, duly executed Certifications as described above.

As to your didactic pronouncements and "beliefs" as to how you feel discovery should proceed in this matter, to the extent that this was abundantly addressed in both Complainants' good faith attempts to resolve outstanding discovery prior to resorting to motion practice, as well as Complainants' pending motion itself, no further response is required or merited thereon.

As to depositions, Complainants have no intention of debating your ridiculous contention that Complainants are estopped from naming Mr. Hitrinov personally as the deponent to be produced in light of his status as an individually named party-respondent in this proceeding, the patent absurdity of which is self-evident. We are further mystified by your smarmy objection as to an alleged "requirement to produce documents" as being associated with the Notice of Deposition served upon Respondents herein, in that *no such language is contained therein*. Apparently, in your pompous zeal to condescend to the undersigned for "academic purposes", you have obviously conflated the statutorily required list of topics to be discussed, with a purported demand for the production of documents *which was never made*. At the risk of being presumptuous, we respectfully suggest that your time would be better spent checking your work for accuracy and veracity, as opposed to pithy repartee.

In closing, your suggestion that Complainants "withdraw or suspend" the motion at bar "pending further developments" is hereby *rejected*, in that Respondents were provided with both ample time and opportunity to comply with the Presiding Officer's Orders and Complainants' demands, and to respond to Complainants' good faith attempts to resolve outstanding discovery prior to resorting to motion practice. You are further advised that upon receipt of materials *fully and completely responsive* to the Presiding Officer's Orders and Complainants' demands, or in the alternative, properly and duly executed Certifications, Complainants will consider withdrawal of their pending motion, assuming such material is received prior to a decision from the Presiding Officer on said motion. Additionally, you are advised that should you fail to timely interpose opposition papers to Complainants' instant motion, Complainants will forthwith petition the Presiding Officer to have Complainants' instant motion granted on default, together with costs, and other appropriate relief.

Very truly yours,

Marcus A. Nussbaum, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Status Report via electronic and first-class mail to the following:

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Marcus.nussbaum@gmail.com

Seth M. Katz, Esq.
P.O. Box 245599
Brooklyn, NY 11224

Dated at Washington, DC, this 8th day of June, 2016.



Eric Jeffrey
Counsel for Respondents